

## REMARKS/ARGUMENTS

The Applicant has amended claims 1, 2, 4-7, 10, 12-14, 16 and 17, canceled claims 3, 8, 9, 11, 15 and 18-21, and added claims 22-30. Claims 1, 2, 4-7, 10, 12-14, 16, 17 and 22-30 are pending in the application.

The Applicant has amended the claims to correct the insufficient antecedent basis under 35 U.S.C. § 112 as pointed out by the Examiner.

In responding to the Examiner's prior art rejections, the Applicant only justifies the patentability of the independent claims (claims 1, 10, 14 and 23). As the Examiner will appreciate, should these independent claims be patentable over the prior art, narrower dependent claims would also necessarily be patentable since all claims that depend there from contain the limitations of these independent claims and merely recite additional limitations that should not preclude patentability. Accordingly, the Applicant does not separately discuss the patentability of the dependent claims, although it reserves the right to do so at a later time, if necessary.

The Examiner has rejected all of the independent claims 1, 10, and 14 being anticipated (35 U.S.C. § 102) by U.S. Pat. Appl. Publ. 2003/0086425 by Bearden, et al., hereinafter Bearden. In support, the Examiner suggests that Beardon discloses (see paragraphs 0224 and 0225). Based upon this comparison, the Examiner insists Beardon anticipates the present invention. The Applicant, however, strongly disagrees.

In short, the novelty provision of 35 U.S.C 102(b) denies patentability when "the invention" was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States. It is well established, however, to "anticipate," pursuant to 102 (b), a single prior art reference must disclose each limitation of a claimed invention or its equivalents functioning in essentially the same way as arranged in the claim.

As amended, each claim in the present application has a limitation, or depends from claims which have the limitation of *setting the size of the jitter buffer based upon congestion information conveyed in a VoIP packet for a call, or setting the size of the jitter buffer based upon the final value of the TTL field conveyed in the VoIP packet for a call in order to mitigate the effect of receipt of non-periodic VoIP packets at the destination; or setting the size of the jitter buffer based upon whether the field is set when the transmission rate for a link used for the VoIP packet is below a predetermined threshold or when the congestion of the link used for the*

VoIP packet exceeds a predetermined threshold in order to mitigate the effect of receipt of non-periodic VoIP packets at the destination.

Thus, if an IP network is either heavily loaded with traffic, has one or more low-speed links, or whose architecture includes voice traffic traveling over a long distance where the connection between routers has some degradation in speed, the present invention provides a means by which an IP packet can be used to convey congestion information to a voice jitter buffer at an end destination. The end destination can then use this information from a packet field in order to set a minimal static jitter buffer size in order to prevent under run of incoming voice data. (see page 3, lines 16-28 of the present invention)

While Beardon mentions that each call has a pair of endpoints, ...packet rate, jitter buffer size, etc, (para. 0224) and that the endpoints compute delay, jitter and packet loss statistics...for each call (para. 0225), a careful reading of this reference fails to disclose *setting the size of the jitter buffer based upon congestion information conveyed in a VoIP packet for a call*. Rather, Beardon merely generates synthetics calls in order to test the suitability of the network for a target application. Thus, Beardon generates a synthetic call and monitors the network by computing, for example, delay, jitter, and packet loss. Beardon then merely stores and displays the data collected about the network in a manner that is easy for the operator to analyze for determining the suitability of the network for target applications, for example, VoIP (see abstract). Nowhere does Beardon anticipate using the VoIP packets to convey congestion information about the network to the destination, and using the conveyed congestion information to set/adjust the size of the jitter buffer in order to mitigate the effect of receipt of non-periodic VoIP packets at the destination.

Based upon this lack of teaching, the Applicant insists that Beardon fails to describe the invention of the present application. Since Beardon fails to disclose an essential limitations of the claimed invention; namely, setting the size of the jitter buffer based upon congestion information conveyed in a VoIP packet for a call, there is no anticipation under 35 U.S.C. 102, because the exclusion of a claimed element from the prior art reference is enough to negate anticipation by that reference. For these reasons, the Applicant asserts that the claims in the present application are not anticipated by Beardon and may therefore be passed to allowance. Thus, the Applicant believes that the subject application, as amended, is in condition for allowance. Such action is earnestly solicited by the Applicant.

In the event that the Examiner deems the present application non-allowable, it is requested that the Examiner telephone the Applicant's attorney at the number indicated below so that the prosecution of the present application may be advanced by the clarification of any continuing rejection.

Please charge any fees that may be due to Deposit Account 502117, Motorola, Inc.

Respectfully submitted,

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